Supreme Court, U.S.
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No. 93-814

In The

Supreme Court of the United States

October Term, 1993

CONRAD JOHN HUSMAN,

Petitioner,

v.

CLIMAX MOLYBDENUM COMPANY, a Delaware corporation, CLIMAX NON-CONTRIBUTORY RETIREMENT INCOME PLAN, BARBARA RANDALL, Administrator,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether, where a pension plan grants the administrator the discretion to interpret the plan and to prescribe procedures for the filing of applications for disability pension benefits, the plan administrator may make the filing of an application for benefits a prerequisite for receipt of benefits.

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BRIEF OF THE RESPONDENTS IN OPPOSITION

Respondents, Climax Molybdenum Company[1] (the "Company") and Climax Non-Contributory Retirement Income Plan, Barbara Randall, Administrator, submit this brief in opposition to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, and request that this Court deny certiorari to review the decision of the Court of Appeals affirming

[1] All parties to the proceeding are listed in the caption. Climax Molybdenum Company is a wholly owned subsidiary of AMAX, Inc.

the award of summary judgment to Respondents by the United States District Court for the District of Colorado.

STATEMENT OF THE CASE

A. Procedural Background

Petitioner commenced his action in the U.S. District Court for the District of Colorado on December 7, 1989, by the filing of a complaint seeking retroactive retirement benefits pursuant to the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.* Respondents filed a Motion to Dismiss and for Summary Judgment and a brief in support of their motion. On August 14, 1992, the District Court entered its Order granting Respondents' Motion (Pet. App. B). On October 1, 1992, Petitioner filed a notice of appeal of the District Court's orders to the United States Court of Appeals for the Tenth Circuit. On June 8, 1993, the Court of Appeals entered its order and judgment affirming the decision of the District Court (Pet. App. A).[2]

B. Factual Background

Conrad John Husman (the "Petitioner"), was granted disability pension benefits from the Company effective October, 1986 (*see* Pet. App. H at 1), pursuant to Article II

[2] References to the Petition for Writ of Certiorari shall be "Pet." followed by reference to the page number or Appendix, cited as "App."

of the Supplemental Agreement, Climax Non-Contributory Retirement Income Plan between the Company and the Oil, Chemical and Atomic Workers International Union, AFL-CIO, amended and restated as of July 15, 1980 (the "Pension Plan") (Pet. App. E). Petitioner commenced his civil action seeking to recover such pension benefits retroactive to 1977.

Petitioner was initially employed by the Company on March 28, 1962. On April 28, 1977, Petitioner injured his back while at work and thereafter was placed on medical lay-off status. From 1981 through 1986, Petitioner received accident and sickness and non-total disability benefits. Because Petitioner could not return to work, the Company terminated Petitioner's employment on April 24, 1981, at the expiration of the four-year medical layoff. (Pet. App. B at 2).

In April, 1986, Petitioner submitted applications for disability pension benefits. To receive total disability pension benefits under the Pension Plan, Petitioner was required to apply for such benefits. Following application, the Plan Administrator was required to determine whether Petitioner was totally and permanently disabled. (Pet. App. E at 28). The application used to apply for disability pension benefits was the same form used to apply for total disability insurance benefits, which was provided through Metropolitan Life Insurance Company ("Metropolitan"). It was the standard practice of the Company and the Plan to use the date on which Metropolitan determined a Pension Plan participant to have been totally and permanently disabled for insurance

purposes as the date the Pension Plan participant was totally disabled for purposes of receiving disability pension benefits. (Pet. App. B at 2-3).

Metropolitan received Petitioner's application for disability insurance benefits in October, 1986. In October, 1987, Barbara Randall, the Plan Administrator received notice that Metropolitan had determined that Petitioner was totally and permanently disabled as of October, 1986, the date on which Metropolitan had received Petitioner's application. (Pet. App. B at 3). Following this determination, the Plan Administrator sent to Petitioner notice that he was eligible for disability insurance and disability retirement benefits. The Plan Administrator also sent to Petitioner a "Request for Payment Information," a form on which the participant selects one of several payment schedules for his or her benefits. The election made in the "Request for Payment Information" is necessarily used by the Plan Administrator to calculate the amount and duration of the disability retirement benefits to be paid. (Pet. App. H at 1). The Plan Administrator did not receive a response to her Request for Payment Information, and notified Petitioner of that fact on May 24, 1989. On August 21, 1989, the Plan Administrator notified Petitioner that it was the Plan's policy to use the notification from Metropolitan to determine when total and permanent disability retirement payments commenced. (Pet. App. H at 5).

Before the District Court, Petitioner sought to recover disability pension benefits retroactive to April, 1977, before any application for such benefits was submitted. Petitioner asserted that the decision by the Plan Administrator to deny benefits retroactive to April, 1977, was

arbitrary, illegal, capricious, unreasonable, discriminatory and not made in good faith, and that the decision violated various provisions of ERISA. (Pet. App. B at 3-4). In its Memorandum, Opinion and Order, the District Court found that "[t]he refusal to grant benefits retroactively to that date is rooted in the determination that any application for such benefits is a necessary condition to their receipt . . . . That is a reasonable interpretation of the plan." (Pet. App. B at 7).

The District Court also rejected Petitioner's contention that an earlier version of the Pension Plan contained language different from the 1980 Pension Plan concerning the definition of disability. The Court concluded, that "[t]here is no meaningful difference in the changes in language and the same result would obtain even if the Plan Administrator used an earlier version of the pension plan." (*Id.* at 8).[3] Finally, the District Court rejected Petitioner's contention that the Plan Administrator had acted improperly in allegedly delegating the determination of the date of disability to Metropolitan. The Court stated, "[t]he eligibility for benefits under the insurance policy and the pension plan are substantially the same and in this Court's view the practice of using the same application for both types of benefits is a reasonable administrative decision." (*Id.* at 8-9).

On appeal, the Court of Appeals found the Plan Administrator's construction of the Plan, treating submission of an application as a prerequisite for receipt of

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[3] Petitioner has not raised nor briefed this issue in his Petition for Writ of Certiorari.

disability pension benefits, was reasonable. The Court of Appeals adopted the reasoning of the District Court and affirmed the decision of the District Court. (Pet. App. A at 4).

ARGUMENT

A. The Decisions of the Lower Court's Finding the Plan Administrator's Interpretation of the Plan to be Reasonable are Correct.

1. The Plan Administrator Had Discretionary Authority to Interpret the Plan, and Therefore, Her Decision May be Reversed Only if Not Reasonable.

This Court, in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989) set forth the applicable standard of judicial review of a denial of benefits under ERISA, 29 U.S.C. § 1132(a)(1)(B). This Court held that a *de novo* standard of review is appropriate for reviewing an employer's denial of benefits, "unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." 489 U.S. at 115.

Article III of the Pension Plan sets forth the authority of the Plan Administrator. It invests the Plan Administrator with discretion to interpret the Plan, stating that the Plan Administrator's "authority with regard to interpretation of said provisions shall be final and binding on the parties hereto." (Pet. App. E, at 8-9). Article III also gives the Plan Administrator power:

> (a) To prescribe procedures to be followed by Members in filing applications for benefits and for furnishing of evidence necessary to establish Members' rights to such benefits; [and]
>
> (b) To make determinations as to the rights established by the Plan of any Member applying for or receiving benefits because of retirement or permanent and total disability . . . .

(Pet. App. E at 9-10).

Because the Pension Plan grants the Plan Administrator discretionary power to interpret the Pension Plan's provisions, the Plan Administrator's decision cannot be disturbed if it is reasonable. *See Richards v. United Mine Workers of Am. Health & Retirement Fund*, 895 F.2d 133 (4th Cir. 1990) (where trustees have "full and final determination say to all issues concerning eligibility for benefits" disability decisions were to be reviewed using an abuse of discretion standard).

Here, the Plan Administrator determined that a member must apply for benefits, that is, submit the form application, before benefits would be paid. In light of the Plan Administrator's authority, granted by the Pension Plan, to set procedures for application and to make determinations of eligibility, that determination should be reviewed only for an abuse of discretion.

2. Making Application for Disability Retirement Benefits Is a Reasonable Prerequisite To Receiving Such Benefits.

Petitioner claims that the Plan Administrator acted arbitrarily, capriciously and unreasonably when she denied Plaintiff total disability benefits retroactive to 1977. The thrust of his claim is that the action by the Plan Administrator, who interpreted the Pension Plan requiring Petitioner to make application for such disability benefits a prerequisite for their commencement, was improper. (Pet. at 32-34). Petitioner's claim lacks a basis either in law or in fact.

Petitioner suggests that he should receive disability pension retroactive to 1977 because he was prevented by the Company or the Plan Administrator from applying for those benefits. This argument is not supported by any evidence in the courts below.

Petitioner received non-total disability benefits through Metropolitan from May 1, 1981 until April, 1986. There is no record evidence that Petitioner ever challenged the determination that he was only partially disabled or that he ever requested or filed an application for total and permanent disability benefits until the time at which the non-total disability payments ceased.[4]

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[4] Petitioner suggests that a 1977 memorandum from Ms. Carolyn Forschar (Pet. App. F), the previous Plan Administrator, denying Petitioner's claims for accident and sickness benefits under the Company's Group Insurance program demonstrates that he was prevented from making an application for disability pension before 1986. (Pet. at 31-32, fn. 15). In fact, the memorandum did not forbid application for accident

Next, Petitioner argues that he should have received disability pension benefits retroactive to 1977 because a grievance he filed in 1977 should be considered an application for total disability pension benefits. Petitioner asserts that the Plan Administrator acted unreasonably in determining that only the application form that Petitioner submitted in 1986 constituted an application. According to Petitioner, the Plan Administrator's definition of "apply" was somehow in conflict with the plain language of the Pension Plan which contained no definition of "apply." This argument is wholly without merit. Article XII 2(a) of the Pension Plan provides, in part: "Disability Retirement Benefits shall be payable to a member, *who has applied therefor* . . . " (Pet. App. E at 28) (emphasis added). Article III of the Pension Plan clearly grants to the Plan Administrator discretionary power "[t]o prescribe procedures to be followed by Members in filing applications for benefits and for furnishing of evidence necessary to establish Members' rights to such benefits." Thus, the Plan Administrator's determination that what was required to apply for Disability Pension Benefits was the submission of an application can only be disturbed if unreasonable. *Firestone*, 489 U.S. at 115. Clearly, where the Pension Plan itself states that benefits are payable only to a member who has applied for them, it is reasonable to

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and sickness nor any other sort of benefits, but merely informed Petitioner that his claim for those benefits could not be granted until he was no longer receiving Workers' Compensation payments. This in no way prevented Petitioner from applying for accident and sickness benefits once his Workers' Compensation payments ceased, nor from applying for Total and Permanent Disability Pension once he became eligible.

require submission of an application as a prerequisite to eligibility for benefits.

Petitioner argues that it was unreasonable for the Plan Administrator to base her determination of disability upon a similar determination by Metropolitan because there was a three month waiting period under the Metropolitan Plan before benefits were payable, but none under the Pension Plan, and the definition of "total and permanent disability" under the Metropolitan Plan was slightly different. (Pet. App. at 30-31). Petitioner once again has failed to focus on the issue before the Court. It was stipulated in the District Court that for purposes of the summary judgment motion, Petitioner had been "totally and permanently disabled" since April 28, 1977. (Pet. App. at 3-4). Because Petitioner's condition was undisputed in the District Court, the standard used to determine whether Petitioner was totally and permanently disabled is irrelevant. Moreover, Petitioner was granted disability pension benefits retroactive to the date his application was received. No waiting period was invoked. Neither of these assertions by Petitioner demonstrates error by the Courts below.[5]

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[5] Petitioner makes a side argument, apparently attempting to call into question the standard of review employed by the District Court and the Court of Appeals. Petitioner asserts it was error for the District Court not to specifically address the issue of the Plan Administrator's neutrality. (Pet. at 35-36). A fiduciary's possible conflict of interest does not affect the standard of review of its decisions. Rather, possible conflict of interest may be considered as a factor in determining whether there has been an abuse of discretion. *Firestone*, 489 U.S. at 115, *citing* RESTATEMENT (SECOND) OF TRUSTS, § 187, comment d (1959).

B. There is No Conflict Among the Circuits Nor Any Question of Law Unresolved by This Court Relating to Petitioner's Claims that Justifies the Attention of This Court

Petitioner argues that this Court should grant certiorari to "clarify" its holding in *Firestone* as to its application to "administrative procedure of a plan, as opposed to its interpretation." (Pet. at 30). No such clarification is necessary. *Firestone* clearly adopts the position of the RESTATEMENT (SECOND) OF TRUSTS, § 187 (1959), and states that when a fiduciary exercises discretionary power granted to it by the plan, its decision will not be disturbed if reasonable. *Firestone*, 489 U.S. at 111. There is no hint in this Court's opinion in *Firestone* that a different standard applies if the setting of procedures is at issue rather than construction of terminology.

Petitioner next argues that the lower courts' decisions in this matter conflict with the holdings in *Torix v. Ball Corp.*, 862 F.2d 1428 (10th Cir. 1988) and *Helms v. Monsanto Co.*, 728 F.2d 1416 (11th Cir. 1984). This argument is also without merit. *Torix* and *Helms* each dealt with a plan fiduciary's determination of what would constitute a "total disability" for purposes of receiving disability benefits. The courts held that to recover disability benefits under an ERISA-covered plan, a plaintiff must "show physical inability to follow any occupation from which he could earn a reasonably substantial income rising to the dignity of an income or livelihood. . . . " *Torix*, 862 F.2d 1428, 1431, *quoting Helms*, 728 F.2d at 1421-22. Here, there was no dispute concerning the existence or extent of Petitioner's disability. For purposes of the Company's summary judgment motion, it

was stipulated that Petitioner was totally and permanently disabled in April, 1977. Therefore the *Torix* and *Helms* decisions have no bearing upon the issues in this case, and provide no justification for this Court's granting of certiorari.

Petitioner's third argument is that the lower courts' holdings in this case conflict with the Fourth and Tenth Circuits' rulings in *Rodriguez v. Meba Pension Trust*, 872 F.2d 69 (4th Cir. 1989) and *Straub v. Western Union Telegraph Company*, 851 F.2d 1262 (10th Cir. 1988). The Courts in *Rodriguez* and *Straub*, refused to give effect to oral or unilateral modifications to the terms of a pension plan. Again, Petitioner provides no justification for this Courts' review of the holdings in this case. Here, there was no oral or unilateral modification of the Pension Plan by the Plan Administrator. The Pension Plan expressly provided the Plan Administrator with discretionary authority to set procedures for the filing by members of the plan of applications for benefits. The fact that the Plan Administrator exercised such power in no way modifies the terms of the Pension Plan.

Petitioner then suggests that the Plan Administrator's determination of what constituted applying for benefits was a factual determination to which a *de novo* standard of review should have been applied. Petitioner states that if the Plan Administrator's determination in this case was a factual determination, the District Court's decision, made applying an abuse of discretion standard, would conflict with *Luby v. Teamsters Health, Welfare & Pension Trust Funds*, 944 F.2d 1176 (3rd Cir. 1991) and *Reinking v. Philadelphia American Life Insurance Co.*, 910

F.2d 1210 (4th Cir. 1990). While it may be that the decisions in *Luby* and *Reinking* would implicate a different standard of review of factual determinations, there were no factual determinations at issue. The timing and existence of Petitioner's contacts with the Company and the Plan Administrator were undisputed. The only question before the Plan Administrator and reviewed by the District Court and the Court of Appeals was whether the Plan Administrator had the authority, under the discretionary powers given her by the Pension Plan, to decide what procedure must be followed to "apply" for benefits. There was no factual determination made, and there is no conflict with *Luby* or with *Reinking*.

Petitioner's last argument, that the lower courts' rulings permitted him to be denied a "full and fair review" of the denial of his claim, contrary to the holdings in an array of Court of Appeals cases cited by the Petitioner (Pet. at 37), is likewise without merit. No grounds for review on this basis would exist unless Petitioner had shown that he was prejudiced by the lack of a hearing. *See Sage v. Automation, Inc. Pension Plan & Trust*, 876 F.2d 885, 895 (10th Cir. 1988). Petitioner has not made even a minimal showing that such prejudice resulted. In fact, the District Court's findings in this matter, later adopted by the Court of Appeals, addressed Petitioner's claim that he was wrongfully denied a hearing, finding that no prejudice to Petitioner could have resulted, because all of the salient facts, including the date of submission and receipt of Petitioner's 1986 application for benefits were undisputed, and the Plan Administrator had determined that Petitioner was in fact disabled. Petitioner once again has

shown no reason why this court should review the lower courts' decisions.

CONCLUSION

The decision of the Plan Administrator in this matter was a reasonable exercise of discretionary authority granted to her by the Pension Plan to set the procedures to be used to apply for benefits under the Pension Plan, and should not be disturbed. Petitioner has failed to identify any relevant issue of law inadequately addressed by the District Court or the Court of Appeals, nor any conclusion drawn by either Court that in any material respect conflicts with the decisions of other federal or state courts. Petitioner has shown no grounds for this Court's exercise of its discretion to review the decision of the Court of Appeals in this case, and Respondent respectfully requests that this Court deny the Petition for Certiorari.

Respectfully submitted,

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December 10, 1993.